

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL ACTION NO. 1:14-CV-305-MOC-DCK**

JUANITA L. JONES, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 )  
 J. CALVIN HILL, et al., )  
 )  
 Defendants. )  
 )

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**MEMORANDUM AND  
RECOMMENDATION**

**THIS MATTER IS BEFORE THE COURT** regarding Defendants' motions to dismiss (Document Nos. 5, 7, 11, 17, and 22) and Plaintiff's "Amended Complaint" (Document No. 15). These motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b), and immediate review is appropriate. Having carefully considered the motions, the record, and the applicable authority, the undersigned will respectfully recommend that the motions be denied as moot, without prejudice to re-file.

**STANDARD OF REVIEW**

Federal Rule of Civil Procedure 15 applies to the amendment of pleadings and allows a party to amend once as a matter of course within 21 days after serving, or "if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Fed.R.Civ.P. 15(a)(1). Rule 15 further provides:

**(2) Other Amendments.** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Fed.R.Civ.P. 15(a)(2).

## DISCUSSION

Plaintiff Juanita L. Jones, appearing *pro se*, filed her original “Complaint” (Document No. 1) on December 8, 2014, and then filed an “Amended Complaint” (Document No. 15) on December 29, 2014. Defendants’ pending motions to dismiss all seek dismissal of the original “Complaint” (Document No. 1). See (Document Nos. 5, 7, 11, 17, and 22). It appears that *pro se* Plaintiff timely amended her Complaint “as a matter of course” pursuant to Fed.R.Civ.P. 15(a)(1).

It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) (“The general rule ... is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect.”); see also, Colin v. Marconi Commerce Systems Employees' Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) (“Earlier motions made by Defendants were filed prior to and have been rendered moot by Plaintiffs’ filing of the Second Amended Complaint”); Turner v. Kight, 192 F.Supp. 2d 391, 397 (D.Md. 2002) (quoting 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1476 (2d ed. 1990) (“A pleading that has been amended ... supersedes the pleading it modifies .... Once an amended pleading is interposed, the original pleading no longer performs any function in the case.”)); Brown v. Sikora and Associates, Inc., 311 Fed.Appx. 568, 572 (4th Cir. Apr. 16, 2008); and Atlantic Skanska, Inc. v. City of Charlotte, 3:07-CV-266-FDW, 2007 WL 3224985 at \*4 (W.D.N.C. Oct. 30, 2007).

Therefore, because the “Amended Complaint” (Document No. 15) supersedes the original “Complaint” (Document No. 1), the undersigned will respectfully recommend that

Defendants' motions to dismiss (Document Nos. 5, 7, 11, 17, and 22) be denied as moot. This recommendation is without prejudice to Defendants filing renewed motions to dismiss the "Amended Complaint" (Document No. 15), if appropriate.

#### **IV. RECOMMENDATION**

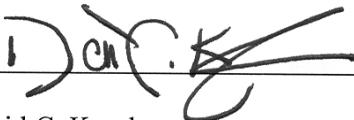
**FOR THE FOREGOING REASONS**, the undersigned respectfully recommends that Defendants' motions to dismiss (Document Nos. 5, 7, 11, 17, and 22) be **DENIED AS MOOT**.

#### **V. TIME FOR OBJECTIONS**

The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within **fourteen (14) days** of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), reh'g denied, 474 U.S. 1111 (1986).

**IT IS SO RECOMMENDED.**

Signed: January 5, 2015



David C. Keesler  
United States Magistrate Judge